Supreme Court, U.S.
FILED

No. 10-1110 DEC 31 2010

OFFICE OF THE CLERK

In The Supreme Court of the United States

NATHAN D. CRISP,
Petitioner,
v.
DIANE BESSEN, et al.
Respondents.

On Petition For Writ Of Certiorari To The United States Supreme Court From The State of Georgia Supreme Court

PETITION FOR WRIT OF CERTIORARI

Nathan Crisp
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Pro se Petitioner

THE QUESTIONS PRESENTED FOR REVIEW

1. Does an ordinary American Citizen have the rights of a jury trial: when he is authorized by law to exercise the right, has perfected the written jury trial demand, has not waved the rights or had the jury trial rights waved by any law?

2. Can the entire Georgia Judiciary regarding this case make judgments under the color of state laws that result in the deprivation of Federal Jury Trial Rights of an ordinary American Citizen?

PARTIES TO PROCEEDING

Nathan Crisp
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v.

Fulton County State Court Judge
The Honorable Judge Diane E. Bessen
404-730-7760 185 Central Avenue, SW, Atlanta, GA 30303

Fulton County State Court Judge
The Honorable Judge Patsy Y. Porter
404-730-4345 185 Central Avenue, SW, Atlanta, GA 30303

Fulton County State Court Judge
The Honorable Albert Thompson
185 Central Avenue, SW, Atlanta, GA 30303

Fulton County Superior Court Judge
The Honorable Melvin K. Westmoreland
(404) 335-2572 136 Pryor Street, SW,
Atlanta, GA 30303.

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Part 1
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Part 2
PETITION FOR WRIT OF CENTIORARI

Now Comes Petitioner and Pro se; Nathan Crisp seeking the enforcement of the rights of jury trial deprived under the color of state law.

OPINIONS BELOW

Complete texts of the G.A. Appeals Courts initial and rehearing and the G.A. Supreme Court appear in the appendix.

Part 3
JURISDICTION, STATUTORY AND REGULATORY PROVISIONS

This petition is filed within 90 days of the failed petition before the State Supreme Court of Georgia. The Seventh Amendment to the United States Constitution and USC 42, Section 1983.

Part 4
STATEMENT OF THE CASE

USC 42, Section 1983 and Jury Trial rights under *42 USC Chap. 21, Sec. 1981a (c).* and *O.C.G.A. 9-15-15 (d)* are asserted in the Petitioners original complaint. *42 USC Sec. 1983* requires that...

certain elements must be proven to take a *42 USC Sec. 1983* action against a judicial officer (The Respondents) *"except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."*

1. Three of the Respondents in their Response to Appellant's Petition For Writ of Certiorari (page 7, lines 12-14) before the G.A. Supreme Court have confessed to a *USC 42, Section 1983* violation:

"Because the issuance of any judgment by a state court judge resulting in deprivation of a litigant's right to trial by jury would constitute an act taken in that judge's judicial capacity..."

2. The Respondents confession claims they were acting within their judicial capacity - this turns on its head our Seventh Amendment to the United

States Constitution. *"Regardless of whether the object of concern is criminal or civil, the right to trial by jury is no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." Blakely v. Wash.*, 542 U.S. 296, 305-306 (2004). However, in complete disregard of the above laws, the entire G.A. judiciary that has reviewed this case has permitted the Respondents this unconstitutional judicial capacity.

3. While the Respondents were busy having this case tired by State judges; this Petitioner was gathering the "under color of state law" evidence used to violate his Federal Jury Trial rights! "*State officials may be held personally liable under 42 USC 1983 if they, while acting under color of state law*

caused the deprivation of a federal right." See *Hafer v. Melo*, 502 U. S. 21, 25 (112 SC 358, 116 LE2d 301) (1991). Each and every G.A. judge under the color of state law in this case deprived this Appellant of his Federal Jury Trial Rights as follows:

3.a. The Respondents themselves have confessed to violating Federal Jury Trial Rights (a declaratory decree) in their answer to the G.A. Supreme Court. One would normally think that with their confession the Respondents themselves (being judges) would act to correct their own self-admitted error! No! The Respondents in a remarkable "misapplication" of judicial capacity, immunity, and the rights of a Federal Jury Trial state, *"Because the issuance of any judgment by a state court judge resulting in deprivation of a litigant's right to trial by jury would constitute an act taken in that judge's judicial capacity..."* The Respondents have under

the color of state law admited to violating this Petitioners Federal rights to a Jury Trial.

3.b. The Honorable Judge Edlein, Fulton County State Court under the presumed authority of *O.C. G. A. 9-15-15(d)* assigned a Superior Court judge to review this case via judgment to the District Court Administrator. However, *O. C. G. A. 9-15-15(d)* does not authorize Judge Edlein to make this judgment – It is the clerk of court that presents the pleading to the court administrator- *"but the clerk of court shall file the matter, but shall present the complaint or other initial pleading to the district court administrator for the judicial circuit where the action was filed, to assign to a superior court judge of that circuit."* Judge Edlein ignores this Respondents *USC 42 Section 1983* assertion by claiming in her judgment that this petitioner was challenging only under state and not federal rights (footnote 1 of page

1). However, In the original complaint, this Petitioner clearly objected (page 2, para. 3) "OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL JUDGEMENT UNDER *O.C.G.A. 9-15-15(d)*" which includes an action brought under *Title 42, Section 1983* of the United States Code which exclusively deals with Federal Constitutional Rights. The Honorable Judge Edlein, Fulton County State Court under the color of state law violated this Petitioners Federal rights to a jury trial.

3.c. The Honorable Superior Court Judge Jerry W. Baxter in his own judgment stated that he was authorized to make a dismissal under *O.C.G.A. 9-15-15(d)*. But *O.C.G.A. 9-15-15(d)* does not allow such a dismissal as *USC 42, Section 1983* was asserted in the original complaint. Honorable Superior Judge Jerry W. Baxter under the color of

state law violated this Petitioners Federal rights to a Jury Trial.

3.d. The G.A. Court of Appeals made a judgment that adopted the Respondents brief. The G.A. Court of Appeals under the color of multiple state laws violated this Petitioners Federal rights to a Jury Trial.

3.e. The G.A. Supreme Court under the color of state law dismissed this Respondents Petition for Centauri under *Court Rule 38(2)* for a lack of timeliness. However, as this case deals with null and void on it's' face judgments - there is no time limit – *O.C.G.A 9-11-60 (0)*, and may be attacked in any Court at any time – *O.C.G.A 9-11-60(a)*. In *Wasden v. Rusco Indus.*, 233 Ga. 439, 445 (211 SE2d 733) (1975), the G.A. Supreme Court held that *"[s]tatutes of limitation have no application to [void] judgments, and there can be no bar, estoppel or*

limitation as to the time when a void judgment may be attacked." The null and void judgments can be attacked repeatedly until they are cured by a jury verdict in this case – *"Nothing can occur which will give the (null) judgment life, and even if an execution (a judgment from the G.A. Appeals Court in this case) has been issued upon it, it may still be attacked." Wasden v. Rusco Industries*, 233 Ga. 439, 444 (211 SE2d 733) and *Murphy v. Murphy* 263 Ga. 280, 430 S.E.2d 749 (1993).

3.f. Shockingly, the entire G.A. judiciary system in this case has failed to enforce the entitled Federal Jury Trial Rights entirely. Not only did they fail to enforce it, but they themselves violated it under color of state law!

4. The Respondents confess to and the G.A. Judges reviewing this case violated the jury trial rights declaratory decree (*O.C.G.A. 9-11-60(d)(1) and (3),*

Ga. Const. Art. 1, Sec. I, Par. XI and U.S. Constitution 7th Amendment): *"When a state court is enforcing a federally created right (U.S. Constitution 7th Amendment and Title 42, Section 1983), of which the right to trial by jury is a substantial part* (in this case the federal rights of a jury trial itself), *the States may not eliminate trial by jury."* - *Minneapolis & St. Louis R.R. v. Bombolis,* 241 U.S. 211 (1916). See also *Melancon v. McKeithen*, 345 F. Supp. 105 (E.D.La.) (three-judge court), aff'd. per curiam, 409 U.S. 943 (1972); *Alexander v. Virginia*, 413 U.S. 836 (1973). Additionally, in this *Title 42, Section 1983* action, a jury trial must be provided according to law - *42 USC Chap. 21, Sec. 1981a (c).*

5. Proving "under color of state law" and declaratory decree violations were easy as G.A. Judges were only too eager to provide such judgments. However, proving that declaratory relief is not available would

be difficult and time consuming. The State of Georgia has many powerful laws on paper that would, if enforced provide declaratory relief and judicial officers (The Respondents) could refer to them as a defense against a *USC 42 Section 1983* proceeding. This Petitioner had to prove that these laws are not enforced! To obtain this proof a Petitioner would have to use the G.A. judiciary and have them all fail! And fail they have! The entire G.A. judicial system has failed in this case to enforce the rights of a Federal Jury Trial; even with all the State laws on paper! The G.A. Judiciary has violated every law on the books regarding jury trial rights and due process rights as follows:

5.a. The G.A. Constitution itself guarantees the right of a jury trial in this case - *G.A. Constitution Art. I, Section I, Para. XI.*

5.b. The G.A. Constitution itself prohibits Judges judgments when a written jury trial demand is perfected - *G.A. Constitution Art. 1, Section I, Para. XI.*

5.c. Violation of Jury Trial Rights is a non-amendable defect. As the entire G.A. Judiciary is fully aware of, but chose to ignore; a written Jury trial demand is perfected, and there is no waver of the inviolate rights. Both the Court of Appeals and the Supreme Court have long held that the failure to provide the required Jury trial is a non-amendable defect! See: *O.C.G.A. 9-11-38*, and *Wise, Simpson &c. Assoc. v. Rosser White &c., Inc.*, 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978).

5.d. Violation of *O.C.G.A 9-11-39(a)* Is A Non-amendable Defect. This Petitioner as the case record clearly shows did not place a written waver stipulation in the trial record; but in fact placed a

written jury trial demand in the Petitioners complaint (page 2, par. 1) and because a hearing was not provided, the opportunity for the Petitioner to make an oral stipulation was impossible. *O.C.G.A 9-11-39(a) "The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, may consent to trial by the court sitting without a jury." Wise, Simpson &c. Assoc. v. Rosser White &c., Inc.*, 146 Ga.App. 789, 795-796 (247 SE2d 479) (1978) (holding that the failure to conduct a jury trial was a non-amendable defect where no waiver of jury trial appeared of record). See also *Coker v. Coker*, 251 Ga. 542 (307 SE2d 921) (1983); *Scott v. W. S. Badcock Corp.*, 161 Ga. App. 826 (289 SE2d 769) (1982).

5.e. Null and Void Judgments: *"a judgment is void on its face when there is a non-amendable defect*

appearing on the face of the record or pleadings which is not cured by verdict or judgment..." Wasden v. Rusco Indus., 233 Ga. 439, 445 (211 SE2d 733) (1975). In this case, judges judgments can not cure a void judgment as *Ga. Const. Art. 1, Sec. I, Par. XI* prohibits such judgments. The null and void judgments in this case can only be cured by a jury verdict! *"A lack of jurisdiction or power in a court entering a judgment always avoids the judgment, ... such action is a mere usurpation of power by the court and may be declared void collaterally without any direct proceedings to revise it"· Prescott v. Bennett,* 50 Ga. 266.

5.f. **Jurisdiction**: The null and void judgments issued in this case lacked jurisdiction over both the person and the subject matter as the G.A. constitution places such under Jury trial – *O.C.G.A. 9-11-60(d)(1)* and *Ga. Const. Art. 1, Sec. I, Par. XI.*

"[A] judgment rendered by the court when a Jury verdict is required by statute is void . . . [Cit.]." McCarthy v. Holloway, 245 Ga. 710, 711 (*267 SE2d 4*) (1980), citing *Canal Ins. Co. v. Cambron, 240 Ga. 708 (242 SE2d 32) (1978)* and *Greene v. Greene,* 76 Ga. App. 225 (45 SE2d 713) (1947).

5.g. *O.C.G.A. 9-15-15* and USC 42 Sec. 1983 revokes judicial immunity for civil actions. However, the G.A. Appeals court in adopting the Respondents brief has ruled that the Respondents are judicially immune.

Part 5
UNDISPUTED FACTS

1. With the Respondents confession, this Petitioners rights to a jury trial are now undisputed and entitled!

2. It is undisputed that declaratory relief is not available through the Georgia Court System. This case now proves beyond a shadow of a doubt that

within the G.A. judiciary there is absolutely no possibility of declaratory relief because G.A. Judges will not enforce those laws on paper.

3. This Petitioner placed a perfected written jury trial demand at each and every level of the G.A. judicial process. It is undisputed that the Respondents and the Georgia Court System in this case deprived this Petitioner's Federal rights of a jury trial (declaratory decree) and used under the color of state laws to deprive the inviolate rights.

4. It is undisputed that the Respondents omission to provide the required jury trial is under their usurped judicial capacity and they themselves have admitted so. *"Because the issuance of any judgment by a state court judge resulting in deprivation of a litigant's right to trial by jury would constitute an act taken in that judge's judicial capacity..."*

Part 6
THE REASON FOR GRANTING REVIEW

A decision by a state court of last resort has so far departed from the accepted and usual course of judicial proceedings, and/or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

The Respondents openly confess to depriving the Federal jury trial rights of this Respondent and violating *USC 42, Section 1983.* But it does not end there! From their own confession they make it clear that they have the *"judicial capacity"* to violate jury trial rights not only of this Petitioner, but any and all as they so choose! This case having appealed all the way to the G.A. Supreme Court shows that G.A. Judges have a policy or custom encouraging the depriving of jury trial rights by State Judges. If this Supreme Court does not grant Certiorari then it shall result in the loss of jury trial rights en masse to

the citizens of Georgia. The 7th Amendment of the U.S. Constitution will be irrelevant as G.A. Judges will not enforce "*litigant's right to trial by jury*". Certiorari by this Supreme Court is urgently needed to protect the rights of a jury trial.

Part 7
MOTIONS

1. Yet Another Written Jury Trial Demand: This Petitioner demands a jury trial of 12 persons. Grant injunctive relief prohibiting G.A. Judges from any further deprivation of Jury Trial rights and return this action to the Fulton County, G.A. State Court for the required jury trial.

2. This U.S. Supreme Court grant other relief as is deemed equitable and just.

DATED: This 3rd day of March, 2011

Nathan Crisp, CHM, SLT
Pro se

Part 8
APPENDEX

SUPREME COURT OF GEORGIA
Case No. S10C1572

Atlanta, October 4, 2010

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

NATHAN CRISP v. DIANE E. BESSEN, JUDGE et al.

The Court of Appeals issued its opinion affirming the dismissal of petitioner's complaint on January 29, 2010 and denied the motion for reconsideration on February 11, 2010. Petitioner did not file his petition until June 11, 2010, beyond the 20 days required under Sup. Ct. R. 38 (2). Therefore, the Court hereby orders that the petition be dismissed.

Court of Appeals Case No. A09A2265

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.

"S/ Lynn M. Stinchcomb" Chief Deputy Clerk

FIRST DIVISION
MILLER C, J., ANDREWS P, J., and BARNES J.

January 29, 2010
NOT TO BE OFFICIALLY
REPORTED

In the Court of Appeals of Georgia

409A2265 CRISP v . BESSEN et al.
Miller, Chief Judge.

In this case the following circumstances exist and are dispositive of the appeal.

(1) The evidence supports the judgment.
(2) No reversible error of law appears and an opinion would have no precedential value;
(3)The judgment of the court below adequately explains the decision.
(4) The issues are controlled adversely to the appellant for the reasons and authority given i n the appellee's brief.

The judgment o f the court below therefore is affirmed in accordance with Court of Appeals Rule 36. Judgment affirmed. Andrews, P. J., and Barnes, J., concur.

Court of Appeals
of the State of Georgia

ATLANTA, FEBRUARY 11, 2010

The Court of Appeals passed the following order

Case No. A09A2265
NATHAN CRISP V. DIANE E . BESSEN, JUDGE
ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 11, 2010
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia. Witness my signature and the seal of said count hereto affixed the day and year last above written.

Clerk,
S/William Z. Martin

OPPOSITION BRIEF

185 (2)

APR 11 2011

No. 10-1110

In the Supreme Court of the United States

NATHAN D. CRISP,

Petitioner,

v.

DIANE E. BESSEN, JUDGE, STATE COURT OF GEORGIA, FULTON COUNTY, et al.,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals of Georgia

RESPONSE BRIEF OF THE HONORABLE DIANE E. BESSEN, THE HONORABLE PATSY Y. PORTER AND THE HONORABLE ALBERT THOMPSON IN OPPOSITION TO THE PETITION FOR CERTIORARI OF NATHAN D. CRISP

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April 11, 2011

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I. INTRODUCTION

On December 30, 2010, Nathan D. Crisp, a prolific filer in Georgia courts, filed the instant Petition for Writ of Certiorari ("Petition"). This petition is clearly meritless and should be summarily denied by this Court. Supreme Court Rule 10 sets forth the standards for granting a Petition for Certiorari and Petitioner does not meet those standards because the issues[1] raised in this Petition were not raised below and are of no consequence beyond the particular facts of this narrow and limited case. The gravamen of Petitioner's unsupported contentions is that the trial court's dismissal[2] of his Complaint for lack of subject

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[1] Petitioner's questions presented for review are as follows: (1) "Does and ordinary American citizen have the rights of a jury trial: when he is authorized by law to exercise the right, has perfected the written jury trial demand, has not waived the rights or had the jury trial rights waived by any law?" and (2) "Can the entire Georgia Judiciary regarding this case make judgments under color of state laws that result in the deprivation of Federal Jury Trial Rights of an ordinary American Citizen. (See Petition for Certiorari p. 2).

[2] For Purpose of this Petition, the Respondents are the Honorable Diane E. Bessen, the Honorable Patsy Y. Porter and the Honorable Albert Thompson. Although the Honorable Melvin K. Westmoreland has been included in the captions of the cases in the lower courts, and is listed as a "Party To Proceedings" in the Petition--he did not participate in the dispositive motion (the Motion to Dismiss that was ruled on in Civil Action 08-EV-005601D, that was appealed in Civil Action A09A2265 and the subject of Petitioner's request for certiorari in the Georgia Supreme Court (Case S10C1572), which gave rise to his Petition for Certiorari to this Court—because he was not served in the underlying case.

matter jurisdiction and failure to state a claim,[3] was an unconstitutional deprivation of his right to a jury trial in a civil case. Petitioner further contends that the Georgia Court of Appeals' upholding of the trial court's dismissal is erroneous and that the Georgia Supreme Court's dismissal of his untimely petition for certiorari, was not authorized since he asserted a right to a jury trial.[4]

Contrary to Petitioner's unsupported contentions, a court's authority to enter an order upon a dispositive motion to dismiss a case or claim, without the need for further trial court proceedings, is well settled in American jurisprudence. Especially where as here, the law is clearly established that judicial officers have absolute immunity from suit for acts that are purely judicial and within the respective court's jurisdiction. See Mireles v. Waco, 502 U.S. 9, 11-12, 112 S.Ct. 286 (1991). Further, Petitioner has not pointed to any conflict between the rulings of the lower courts concerning the immunity of the judges and federal law, nor does any exist. The stale issues raised in this Petition have been sufficiently addressed, and as a

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[3] The Complaint is entitled: "Written Demand for Jury Trial and Objection to Superior Court Judge Making Illegal Judgment Under O.C.G.A. § 9-15-15 (d) and Complaint – Violation of Jury Trial Rights Under State Laws and G.A. Constitution and Objection to All Defendnat Motions and Stipulate This Action To the Trial Calendar" (sic). (Respondents' Appendix "A", p. 7a-9a).

[4] An appeal from the Court of Appeals of Georgia to the Georgia Supreme Court was required to be filed within 20 days (Georgia Supreme Court Rule 38(2)), and an appeal from the Court of Appeals of Georgia to the U.S. Supreme Court was required to be filed within 90 days pursuant to Supreme Court Rule 13. In this case, Petitioner did neither.

consequence, this case provides no compelling reason to revisit them. The issues are not distinct or novel from ones already addressed by this Court in Mireles supra.

As noted in United States Supreme Court Rule 10, a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. For instance, the Petition states that Petitioner asserted a "USC 42, Section 1983 claim in his original complaint" before the trial court, when he in fact did not. (Respondents' Appendix p. "A", 7a-9a). Furthermore, the questions presented do not arise out of a conflict in the courts of appeals or state supreme courts of this nation, nor do they involve issues of general importance that are ripe for Supreme Court review.

There was also no federal constitutional question raised by Petitioner in the courts below. Therefore, Petitioner's question to be presented to this Court concerning "Federal Jury Trial Rights" (Question # 2) was not considered or ruled on below. Consequently, there are no valid federal constitutional questions before this Court.

II. PROCEEDINGS BELOW

On September 26, 2008, Petitioner filed a Complaint in the State Court of Fulton County, Civil Action File Number 08-EV-005601D, seeking damages in the amount of $250,000.00 from each of the Respondents. (Respondents' Appendix "A", p. 7a-9a).

The Complaint made no specific factual allegations against any of the Respondents, aside from stating

that "[t]he Defendants have made judgments that are illegal, prohibited, and unconstitutional[5] because the Plaintiff made a written demand for jury trials in full compliance with the law...Plaintiff did NOT waive his rights to a jury trial....Defendants violated his rights to a jury trial...Defendants failed entirely to obey the laws of O.C.G.A. 9-4-6, 9-11-38, and 9-11-39." (sic). (Respondents' Appendix "A", p. 8a).

Respondents filed an Answer and a Motion to Dismiss on October 31, 2008. On November 4, 2008, the case was transferred to the Superior Court of Fulton County, pursuant to O.C.G.A. §9-15-15(d) for a frivolity determination. (Respondents' Appendix "B", p. 10a-11a). The Superior Court entered a final order on May 29, 2009, granting Respondents' Motion to Dismiss, and dismissing the action in its entirety for failure to state a claim for relief. (Respondents' Appendix "C", p. 12a-13a).

Petitioner appealed to the Georgia Court of Appeals. On January 29, 2010, the Court of Appeals, in Crisp v. Bessen, A09A2265, affirmed the dismissal holding that the evidence supported the judgment, no reversible error of law appeared, the trial court adequately explained the decision and the controlling authority cited in the Respondents' brief was sufficient to deny the relief sought by Petitioner. (Petition, Appendix p. 20).

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[5] The Complaint challenged the Respondents "judgments" as violating the Constitution of the State of Georgia, not the United States Constitution. (Respondents' Appendix "A", p. 7a-9a).

On February 5, 2010, Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied on February 11, 2010. (Petition, Appendix p. 21). On June 11, 2010, Petitioner filed a petition for certiorari (S10C1572) to the Supreme Court of Georgia asking it to reverse the decision of the Court of Appeals on the grounds that the Court of Appeals erred when it affirmed the lower courts judgment.

On October 4, 2010, the Georgia Supreme Court dismissed the petition on the basis that Petitioner did not file his certiorari until June 11, 2010, which was beyond the 20 day deadline set by Georgia Supreme Court Rule 38 (2). (Petition, Appendix p. 19).

III. ARGUMENT AND CITATION OF AUTHORITIES

1. THE PETITION SHOULD BE DENIED

A. Petitioner's Questions Presented For Review Do Not Present Any Compelling Reason For Consideration.

A review, on a writ of certiorari, is not a matter of right but one of judicial discretion that is only granted for "compelling reasons," such as: (1) a direct conflict between United States courts of appeals on a common question; (2) a conflict between a United States court of appeals and a state court of last resort; and (3) conflicts on an important federal question between state courts of last resorts on an important question of federal law that has not yet been settled by this Court. See Supreme Court Rule 10. Application of these

standards mandate that the Petition in this case be denied.

Petitioner contends that individual state judges, including judges that are not even parties in his Petition,[6] exceeded their authority under O.C.G.A. § 9-15-15 (d),[7] to dismiss his Complaint in violation of his Federal rights to a jury trial and in violation of 42 USC, Section 1983, which does not afford judicial immunity for such acts. (Petition, p. 5-6). Petitioner further contends that these judges have "confessed" before the Georgia Supreme Court to a "USC 42,

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[6] The judges named by Petitioner include the Honorable Susan Edlein, Judge of the State Court of Fulton County (Petition, p. 5 and 6) and the Honorable Jerry W. Baxter, Judge of the Fulton County Superior Court (Petition, p. 6), neither of whom are parties to this action.

[7] O.C.G.A. 5-9-15-15 (d) provides in pertinent part:

> "[W]hen a civil action against a judicial officer, other than an action quo warranto, mandamus, or an action brought under Title 42, Section 1983 of the United States Code, which action arises out of the performance of the judicial official; duties is presenting for filing, the clerk of court shall file the matter but shall present the complaint or other initial pleading to the district court administrator for the judicial circuit where the action is filed, to assign to a superior court judge of that circuit...The judge shall review the pleading, and, if the judge determines that the pleading shows on its face such complete absence of any justiciable issue of law or fact that it cannot be reasonably believe that the court could grant any relief against any party named in the pleading, then the judge shall enter an order dismissing the pleading. An order dismissing the pleading shall be appealable in the same manner as an order dismissing an action."

Section 1983 violation: 'Because the issuance of any judgment by a state court judge resulting in deprivation of a litigant's right to a trial by jury would constitute an act taken in that judge's judicial capacity...'." (Petition, p. 2). Petitioner contends that the Georgia Court of Appeals and the Georgia Supreme Court acted under color of unspecified multiple state laws to deprive him of his Federal rights to a jury trial when they respectively upheld the judgment of the trial court in dismissing his Complaint and dismissed his petition for certiorari. (Petition, p. 7, 16).

Improperly relying on Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004), which concerns the Sixth Amendment right to a trial by jury in criminal cases, Petitioner asserts that the judgments rendered by the Respondents were unconstitutional under the Seventh Amendment of the United States Constitution and a violation "under color of state law." (Petition, p. 3). In short, Petitioner contends that the entire Georgia judiciary "have a policy or custom encouraging the depriving of jury trial rights." (Petition, p. 16).

As much as Petitioner may believe that State of Georgia judges do not have the inherent authority to dismiss cases procedurally or upon dispositive motions when a party has requested a jury trial, Petitioner has utterly failed a assert a cognizable claim under Supreme Court Rule 10. No where in his bare-boned, conclusionary, and unsupported assertions has Petitioner established any element under Rule 10 concerning judges' rights to dispose of civil cases where jury trial demands have been made by dispositive motions or otherwise, that creates a conflict between United States courts of appeals on this question, creates a conflict between a United States court of

appeals and a state court of last resort, or creates a conflict on an important federal question between state courts of last resorts on an important question of federal law that has not yet been settled by this Court. Accordingly, this Court should not consider this Petition because the issues are of no consequence beyond Petitioner's particular case and Petitioner did not raise a Seventh Amendment violation below in his Complaint. As discussed below, Petitioner only raised a violation of "[J]ury trial rights under state laws and G.A Constitution," below in his Complaint. (Respondents' Appendix "A", p. 7a-9a). Furthermore, in his Brief to the Georgia Court of Appeals, Petitioner references "[G]a Coast. 1983, Art. 1, Sec. 1, Para XI" (sic), which is a reference to the Georgia Constitution as same was amended in 1983, and not to a 42 USC § 1983 claim. (Respondents' Appendix "D", p. 15a).

B. It Is Well Settled Law That Respondent Judges Are Entitled To Absolute Judicial Immunity Under The Circumstances Asserted By Petitioner.

Petitioner's claims in the trial courts below against Respondents arose from decisions they made as state court judges and were completely barred by judicial immunity under State of Georgia law. "Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages." Mireles v. Waco, 502 U.S. 9, 11, 112 S.Ct. 286, 288 116 L.Ed.2d 9 (1991) (citing Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815(1985)).

The only exceptions to judicial immunity are 1) "actions not taken in the judge's judicial capacity", and

2) "actions...taken [by a judge] in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11-12, 112 S.Ct. at 288. See also Robinson v. Becker, 265 Ga.App. 692, 595 S.E.2d 319 (2004) (applying same analysis of judicial immunity to state law claims as applies to federal civil rights actions), and Wilson v. Moore, 275 Ga.App. 493, 621 S.E.2d 507 (2005) (judicial immunity barred plaintiff's claims, and appeal was frivolous where allegations were based solely on judge acting in her judicial capacity and plaintiff did not claim lack of jurisdiction).

Judges are well within their authority when they dismiss a case prior to the jury trial stage. See Bush v. Morris, 123 Ga. App 497, 181 S.E.2d 503 (1971). The right to a jury trial is not absolute; it does not assure a trial by jury of all justiciable disputes. For instance, jurisdictional issues are for a court, not a jury to decide, whether they hinge on legal or factual determinations. See Williamson v. Tucker, 645 F.2d 404, 413, 58 A.L.R. Fed 371 (C.A. Tex., 1981) citing 5 C. Wright & A. Miller, Federal Practice and Procedure ¶ 1350 (1969).

In his Petition to this Court, Petitioner claims that in his Complaint he made an express "Objection to Superior Court Judge Making Illegal Judgment under O.C.G.A. § 9-15-15 (d).)" (Petition p. 6). Because the issuance of any judgment by a state court judge resulting in deprivation of a litigant's right to trial by jury would constitute an act taken in that judge's judicial capacity, and because there is no indication that the Honorable Judge Baxter (a non-party), did not act on matters within his jurisdiction by granting Respondents Motion to Dismiss, Petitioner's claims based on the alleged act of Judge Baxter in dismissing

his Complaint, along with the acts of the other Respondents, are barred by judicial immunity. Wilson v. Moore, supra.

Furthermore, it is "well settled law that judges acting within their judicial capacity are immune from suit for money damages." In re Morales, 282 Ga. 471, 651 S.E.2d 84 (2007) (citing Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286 (1991)). As such, Petitioner's claim in his Complaint that he was entitled to money damages in the amount of $250,000.00 from Respondents were barred by judicial immunity as well.

Likewise, although not raised in his Complaint below, Petitioner's contentions that Section 1983 prevents the imposition of judicial immunity, is not valid. Judges have been held to be absolutely immune from Section 1983 actions, as long as they are performing adjudicative functions within their jurisdiction. Pierson v. Ray, 386 U.S. 547, 87 S.Ct 1213 (1967) *reversed on other grounds*; Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099 (1978). The necessary inquiry in determining whether a judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. Stump supra. "[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." Stump at 356. The fact that the judge was incorrect about the status of jurisdiction or that there were procedural errors causing the judge to act without jurisdiction does not satisfy the requirements for defeating immunity. Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 771 (3d Cir. 2000). When determining if the act is judicial, it is appropriate to consider "the nature of the act itself, *i.e.*, whether it is a function normally

performed by a judge," and "the expectations of the parties, *i.e.*, whether they dealt with the judge in his official capacity." Stump 435 U.S. at 362. Clearly, the actions of the Respondents in either dismissing Petitioner's Complaint, ruling that the dismissal was not erroneous, or that Petitioner's appeal of these judgments were not timely, are judicial in nature and should be afforded full judicial immunity.

C. Petitioner Did Not Raise Either A Seventh Amendment Claim Or An Alleged Violation Of 42 USC § 1983 Claim Below.

The central issues raised in Petitioner's Complaint and in his appeal below, were not whether his "Federal Rights to a jury trial" including 42 USC § 1983 rights were violated as he now contends in his Petition (Page 2 and generally) and in his Question #2 presented for review. (See Respondents' Appendix "A", p. 7a-9a). Petitioner's untimely attempt to raise a "Federal Violation" or 42 USC § 1983 violation stemming from the dismissal of his case is untimely and defective and, was not ruled on by the trial court, Georgia Court of Appeals or Georgia Supreme Court. Strickland v. State, 130 Ga. App 689, 692, 204 S.E.2d 307, 310 (1974) (error not enumerated although argued in the brief cannot be considered by the appellate court on appeal); McDonald v. McDonald, 156 Ga. App. 565, 275 S.E.2d 142 (1980). Not only is there no conflict between state and federal jurisprudence on the "Federal right to jury trial" or 42 USC 1983 issues now raised by Petitioner, the Petitioner failed to assert and properly preserve any of these alleged violations.

A party also cannot use his brief on appeal to expand the enumerations of error to include new issues for the appellate court's review. Tucker v. State, 299 Ga. App. 278, 280, 683 S.E.2d 356, 358 (2009) (an appealing party may not use its brief to expand its enumeration of errors by arguing the incorrectness of a trial court ruling not mentioned in the enumeration of errors). Similarly, a party cannot broaden his enumerated errors through argument or citations in a brief. Bryant v. State, 288 Ga. App. 564, 565, 655 S.E.2d 247, 248 (2007); Ketchup v. Howard, 247 Ga. App. 54, 65, 543 S.E.2d 371, 380 (2001), overruled on other grounds.

Appellate courts are for the review and corrections of errors. Accordingly, the Georgia Court of Appeals could not consider Petitioner's "Federal right to a jury trial" issue because it was not supported in the record and shown to have been ruled on by the trial judge. Smith v. Layman, 279 Ga. 823, 620 S.E.2d 796 (2005) (issues not raised at trial will not be considered for the first time on appeal). Consequently, neither the trial court nor the Georgia Supreme Court addressed the merits of the questions now presented in any of their orders because Petitioner did not properly raise the errors below. (See Appendixes). This Court should continue its history of not deciding questions neither raised nor resolved below unless injustice might otherwise result. Glover v. United States, 531 U.S. 198, 205, 121 S.Ct. 698 (2001); Singleton v. Wulff, 428 U.S. 106, 121, 96 S.Ct. 2868 (1976). Notwithstanding Petitioner's contrary assertions, his asserted "Federal right to a jury trial" issue and Section 1983 violations were not timely or properly stated in the trial court, and there was no "distinct ruling" on these alleged constitutional issues, by the trial court, or

subsequently by the Georgia Supreme Court, which dismissed his petition for certiorari as untimely. (Petition, Appendix p. 19).

Webb v. Webb, 451 U.S. 493, 101 S.Ct. 1889, 68 L.Ed.2d 392 (1981), is directly on point. In Webb v. Webb, this Court had inadvertently granted certiorari to consider a federal custody question, but after considering the matter, and discovering that a federal question was not raised below in the trial court of Georgia Supreme Court, corrected itself by dismissing the case without reaching the merits. Id. 451 at 494. In Webb, this Court indicated: "We note first that nowhere in the opinion of the Georgia Supreme Court is any federal question mentioned, let alone expressly passed upon." Id. at 495. In declining the writ, this Court stated the practical reasons for insisting that federal issues be presented first in the state-court system, so as to afford the parties the opportunity to develop the record for adjudication; allow state court to construe state statues so as to avoid federal constitutional challenges such as "vagueness" and "overbreath;" and insures that state statutes that address the matter can be acted upon without resorting to a constitutional challenge. See also Adams v. Robertson, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed.2d 203 (1997); Howell v. Mississippi, 543 U.S. 440, 125 S.Ct. 856, 160 L.Ed.2d 873 (2005). See also, Flott v. Southwest Permanente Med., 288 Ga. App. 730, 655 S.E.2d 242 (2007)(failure to properly raise constitutional claim in trial court waives the issue); John Hardy Group v. Cavo Largo Hotel, 286 Ga. App. 508, 649 S.E.2d 82 (2007) (even if constitutional issue raised in the trial court, a failure to obtain distinct ruling thereon, waived the issue); In re Serpantfoot, 285 Ga. App. 325, 327, 645 S.E.2d 267 (2007) (Court

was without jurisdiction to consider constitutional issues because Petitioner failed to obtain a distinct ruling in the trial court on the constitutional issues). As such, Petitioner's request for certiorari should be denied.

V. CONCLUSION

Crisp's Petition, and the issues raised therein, fall woefully below the standards established by this Court for granting writs of certiorari. It follows that Petitioner's Petition for Writ of Certiorari should be summarily denied.

Respectfully Submitted this 11th day of April, 2011.

OFFICE OF THE FULTON COUNTY ATTORNEY
R. DAVID WARE
COUNTY ATTORNEY

Denval A. Stewart
Counsel of Record

141 Pryor Street, S.W., Suite 4038
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APPENDIX

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APPENDIX A

GEORGIA, FULTON COUNTY

STATE COURT OF FULTON COUNTY
Civil Division

DO NOT WRITE IN THIS SPACE

CIVIL ACTION FILE NO. 08EV005601D
ATTORNEYS NOTE -- DESIGNATED E-FILED CASE *
CONTACT THE COURT AT 404.730.5040 AND LEXISNEXIS CUSTOMER SUPPORT AT 1.888.529.7587

TYPE OF SUIT	AMOUNT OF SUIT
[ ] ACCOUNT	PRINCIPAL $ _____
[ ] CONTRACT	
[ ] NOTE	INTEREST $ _____
[ ] TORT	
[ ] PERSONAL INJURY	ATTY. FEES $ _____
[ ] FOREIGN JUDGMENT	COURT COSTS $ _____
[ ] TROVER	
[ ] SPECIAL LIEN	
**********	
[ ] NEW FILING	
[ ] RE-FILING: PREVIOUS CASE NO. _____	

Nathan Crisp

1633 Atkinson Park Circle

Lawrenceville, GA 30043
Plaintiff's Name, Address, City, State, Zip Code

vs.

Judge Diane Bessen

185 Central Ave. SW

Atlanta, GA 30303
Defendant's Name, Address, City, State, Zip Code

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to wit:

Name: Nathan Crisp

Address: 1633 Atkinson Park Circle

City, State, Zip Code: Lawrenceville, GA. 30043
Phone No.: 404-933-0806

An answer to the complaint which is herewith served on you, within thirty (30) days after service on you, exclusive on the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this

action. DEFENSE MAY BE MADE & JURY TRIAL DEMANDED, if desired, in the Clerk's Office at 185 Central Ave., S.W., Room TG100, Atlanta, GA 30303.

This _____ *Donna Jones-Frederick, Chief Deputy Clerk*

If the sum claimed in the suit, or value of the property sued for, is $300.00 or more Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the defendant's answer must be sworn to.

If the principal sum claimed in the suit, or value of the property sued for, is less than $300.00, and is on a note, unconditional contract, account sworn to, or the petition sworn to, defense must be made by filing a sworn answer setting up the facts relied on as a defense.

SERVICE INFORMATION:
Served, this 2 day of Oct, 2000.

/s/ _____
DEPUTY MARSHAL,
STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:
We, the jury, find for _____

This ___ day of ____, 20__. _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

THE STATE COURT FOR THE COUNTY OF FULTON STATE OF GEORGIA

Plaintiff **Civil Action File _____**

Nathan Crisp
1633 Atkinson Park Circle
Lawrenceville, GA 30043
nathancrisp@yahoo.com
404-933-0806
Pro se

Defendants

Fulton County State Court Judge
The Honorable Judge Diane E. Bessen
404-730-7760 185 Central Avenue, SW, Atlanta, GA 30303

Fulton County State Court Judge
The Honorable Judge Patsy Y. Porter
404-730-4345 185 Central Avenue, SW, Atlanta, GA 30303

Fulton County Superior Court Judge
The Honorable Melvin K. Westmoreland
(404) 335-2572 136 Pryor Street, SW, Atlanta, GA 30303

Fulton County State Court Judge
The Honorable Albert Thompson
185 Central Avenue, SW, Atlanta, GA 30303

VERIFICATION

Personally appeared, before me, an officer of the Court duly authorized to Administer oaths, NATHAN

CRISP, who after being sworn states that the facts alleged in the foregoing WRITTEN DEMAND FOR JURY TRIAL, OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL JUDGEMENT UNDER O.C.G.A. 9-15-15(d), COMPLAINT - VIOLATION OF JURY TRIAL RIGHTS UNDER STATE LAWS AND G.A. CONSITIUTION, OBJECTION TO ALL DEFENDNAT MOTIONS, AND STIPULATE THIS ACTION TO THE TRIAL CALENDER are true and correct.

DATED: This 26th day of Sep., 2008

Sworn to and subscribed before me,
The 26 day of September 2008

/s/ Nathan Crisp
Nathan Crisp, CiHM SLT

/s/ A. Faye Thornton
NOTARY PUBLIC

[SEAL] A FAYE THORNTON
Notary Public - State of Georgia
Fulton County
My Comm Expires Nov 3 2009

THE STATE COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA

Plaintiff **Civil Action File** _____
Nathan Crisp
1633 Atkinson Park Circle
Lawrenceville, GA 30043
nathancrisp@yahoo.com
404-933-0806
Pro se

Defendants
Fulton County State Court Judge
The Honorable Judge Diane E. Bessen
404-730-7760 185 Central Avenue, SW, Atlanta, GA 30303

Fulton County State Court Judge
The Honorable Judge Patsy Y. Porter
404-730-4345 185 Central Avenue, SW, Atlanta, GA 30303

Fulton County State Court Judge
The Honorable Albert Thompson
185 Central Avenue, SW, Atlanta, GA 30303

Fulton County Superior Court Judge
The Honorable Melvin K. Westmoreland
(404) 335-2572 136 Pryor Street, SW, Atlanta, GA 30303

WRITTEN DEMAND FOR JURY TRIAL
and
OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL, JUDGEMENT UNDER O.C.G.A. 9-15-15(d)
and
COMPLAINT - VIOLATION OF JURY TRIAL RIGHTS UNDER STATE LAWS AND G.A. CONSTITUTION
and
OBJECTION TO ALL DEFENDNAT MOTIONS
and
STIPULATE THIS ACTION TO THE TRIAL CALENDER

WRITTEN JURY TRIAL DEMAND

1. **NOW COMES Nathan Crisp**, a Pro se Plaintiff demanding that all matters are tried by a jury of 12 persons and the right to a jury trial under any circumstance is not waved.

OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL JUDGEMENT UNDER O.C.G.A. 9-15-15(d)

2. A superior court judge of this circuit rendering a judgment under O.C.G.A. 9-15-15(d) is prohibited because this Plaintiff has demanded a jury trial in writing and such judgment would be illegal and unconstitutional under Section I, Para. XI of the Georgia state constitution.

COMPLAINT - VIOLATION OF JURY TRIAL RIGHTS UNDER STATE LAWS AND G.A. CONSITIUTION

3. Georgia Judges (the Defendants) have no judicial immunity O.C.G.A. 9-15-15.

4. The Defendants have made judgments that are illegal, prohibited, and unconstitutional because the Plaintiff made a written demand for jury trials in full compliance with the law. This Plaintiff did NOT wave his rights to a jury trial at any time what-so-ever! Therefore the Defendants violated his rights to a jury trial.

5. The Defendants failed entirely to obey the laws of O.C.G.A. 9-4-6, 9-11-38, and 9-11-39.

OBJECTION TO ALL DEFENDANTS MOTIONS

6. Section I, Para. XI of the Georgia state constitution forbids any Judge in making any judgments what-so-ever (as none of the exceptions apply) as a written demand for a jury trial has been made in full compliance with the laws and constitution of Georgia. Any and all motions that can be possibility made by the Defendants that would require any judgments of any judge at all are illegal and unconstitutional. Whatever motions the Defendants make, **tell it to the jury**. This Plaintiff shall present the facts and the laws regarding this action to a jury ONLY! Only a jury can decide the laws and facts in this case as a written demand has been made.

7. This Plaintiff refuses to participate in any process or procedure what-so-ever except at a jury trial. This Plaintiff objections any motions that are certain to be made by the Defendants (as they full well know) are illegal and unconstitutional.

8. Under O.C.G.A. 9-4-6, 9-11-38, 9-11-39, and Section I, Para. XI of the Georgia state constitution this Plaintiff refuses and shall not wave his rights to a jury trial under any and all circumstances what-so-ever.

STIPULATE THIS ACTION TO THE TRIAL CALENDER

9. Since all judges judgments in this case are illegal as a matter of law, just as soon as the Defendants have provided their Answers required by the civil practice act or are in default, place this action on the ready list, place this action upon the trial calendar, issue the pre-trial order.

10. **WHEREFORE** Nathan Crisp prays a Jury will:

1. Require each Defendant to pay damages of $ 250,000 for the jury trial constitutional rights violated.

Dated this 9-26, 2008

/s/ Nathan Crisp
Nathan Crisp, CiHM
Pro se Plaintiff

APPENDIX B

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE
NO. 08-EV-005601D

[E-FILED November 4, 2008]

NATHAN CRISP,	)
	)
Plaintiff,	)
	)
v.	)
	)
HONORABLE DIANE E. BESSEN, Fulton County State Court Judge, HONORABLE PATSY Y. PORTER, Fulton County State Court Judge, HONORABLE ALBERT THOMPSON, Fulton County State Court Judge, and HONORABLE MELVIN K. WESTMORELAND, Fulton County Superior Court Judge,	)
	)
Defendants.	)

ORDER REFERRING CASE TO SUPERIOR COURT OF FULTON COUNTY

Having reviewed the Complaint filed in the above-styled matter, the Court finds that Plaintiff asserts a

civil action against judicial officers, other than an action for quo warranto, mandamus, or an action brought under 42 U.S.C. § 1983, which arises out of the performance of the judicial officers' official duties – "[t]he Defendants have made judgments that are illegal, prohibited, and unconstitutional . . . ."[1] As set forth by O.C.G.A. § 9-15-15(d), such civil actions are subject to an initial, frivolity review by a Superior Court Judge. Accordingly,

IT IS HEREBY ORDERED that the Complaint shall be presented to the District Court Administrator for the Atlanta Circuit for assignment to a Superior Court Judge of that circuit. Pursuant to O.C.G.A. § 9-15-15(d), the assigned judge shall review the Complaint, and, if the judge determines that the Complaint shows on its face such a complete absence of any justiciable issue of law or fact that it cannot be reasonably believed that the court could grant any relief against any party named in the pleading, then the judge shall enter an order dismissing the Complaint.

This 4th day of November, 2008.

/s/ Susan E. Edlein
Susan E. Edlein
Judge, State Court of Fulton County

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[1] Notably, Plaintiff is challenging Defendants' "judgments" as violating the Constitution of Georgia, not the United states.

APPENDIX C

X

**IN THE SUPERIOR COURT OF
FULTON COUNTY
STATE OF GEORGIA**

**CIVIL ACTION
File No. 2009CV165764**

[Filed May 29, 2009]

NATHAN CRISP,	)
	)
Plaintiff,	)
	)
v.	)
	)
HONORABLE DIANE E. BESSEN, PATSY Y. PORTER, ALBERT THOMPSON, and HONORABLE MELVIN K. WESTMORELAND,	)
	)
Defendants.	)

FINAL ORDER

The above-styled matter is before the Court on the Defendants' Motion to Dismiss for Failure to state a claim, to which Plaintiff has not responded. Plaintiff asserts claims against both State and Superior Court Judges. Pursuant to O.C.G.A. § 9-15-15(d), "the judge

shall review the pleading, and, if the judge determines that the pleading shows on its face such a complete absence of any justiciable issue of law or fact that it cannot be reasonably believed that the court could grant any relief against any party named in the pleading, then the judge shall enter an order dismissing the pleading." After having read and considered said motion and reviewed the entire record, IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss is GRANTED, and this action is dismissed in its entirety for failure to state a claim for relief.

The Clerk is DIRECTED to close this file.

SO ORDERED, this 29 day of May, 2009.

/s/ Jerry W. Baxter
Jerry W. Baxter
Judge, Superior Court of Fulton County

APPENDIX D

THE COURT OF APPEALS
STATE OF GEORGIA

Appeal Case # A09A2265

Nathan Crisp
3800 Squaw Valley Dr. SW Apt 10A
nathancrisp@yahoo.com
404-933-0806
Pro se Appellant

Diane Bessen , et al.
Appellee

BRIEF
PART 1

Now Comes Appellant, Pro se, Nathan Crisp hereby files his appeal. On May 29, 2009 the Honorable Judge Jerry W. Baxter, Superior Court of Fulton County issued a Final Order (a Judgment) granting the Defendants Motion to Dismiss.

PART 2

ENUMBERATION OF ERRORS

1. The lower Court erred when it made a judgment in and of itself. A written jury trial demand had been perfected, and there was no waver of the inviolate right. Such judgments are unconstitutional and violate the Appellant's rights to a jury trial. Manderson &c. v.

Gore, 193 Ga. App. 723 (5) (389 SE2d 251) (1989). "The constitutional guarantee of the right to trial by jury refers to two circumstances in which the right may be waived: when no issuable defense is filed and when the parties fail to demand a jury trial."

2. The lower court erred when the Honorable Judge Jerry W. Baxter's judgment stated that there were no objections to the Defendants Motion to Dismiss, when the original complaint made multiple objections to any motions or judgments that would violate the rights of a jury trial.

PART 3

MOTIONS

1. Enforce the inviolate rights of a jury trial.

2. Enforce the G.A. Constitutional prohibitions upon Judges rendering a Judgment, when a written jury trial demand is perfected (Ga. Coast. 1983, Art. 1, Sec. I, Par. XI).

3. Return this case to the lower courts for jury trial

DATED: This 8th day of Aug, 2009

/s/ Nathan Crisp
Nathan Crisp, CiHM SLT
Pro se

THE COURT OF APPEALS
STATE OF GEORGIA

Appeal Case # A09A2265

Nathan Crisp
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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing Brief was served upon the Defendant by placing same in a properly addressed envelope, and depositing it with the US Postal Service, with sufficient US First Class Certified postage affixed there to assure delivery to the Defendants' attorney of record as follows:

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DATED: This 8th day of Aug., 2009

/s/ Nathan Crisp
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No. 10-1110

In The Supreme Court of the United States

NATHAN D. CRISP,
Petitioner,
v.
DIANE BESSEN, et al.
Respondents.

On Petition For Writ Of Certiorari
To The United States Supreme Court From
The State of Georgia Supreme Court

PETITIONERS REPLY BRIEF TO THE RESPONSE BRIEF OF THE RESPONDENTS

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TABLE OF AUTHORITIES

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O.C.G.A. 9-15-15 (c)
O.C.G.A. 9-15-15 (d)
The 5th, 7th,and 14th Amendments to the United States Constitution
USC 42, Section 1983
Blakely v. Wash., 542 U.S. 296, 305-306 (2004)
Hafer v. Melo, 502 U. S. 21, 25 (112 SC 358, 116 LE2d 301) (1991)
McCarthy v. Holloway, *245 Ga. 710*, 711 (*267 SE2d 4*) (1980), citing Canal Ins. Co. v. Cambron, *240 Ga. 708 (242 SE2d 32) (1978).*
Greene v. Greene, 76 Ga. App. 225 (45 SE2d 713) (1947).
Singleton v. Wulff, 428 U. S. 106, 121, 96, S.Ct 2868 (1976)
Turner v. City of Memphis, 369 U. S. 350 (1962)
Hormel v. Helvering, 312 U.S. at 312 U. S. 557.

REPLY BRIEF

1. Introduction: The Respondents continue to usurp our constitutions and through "eye won't see" supplant law! They won't see written jury trail demands and deny the existence of jury trial rights. They continue the myth of unlimited judicial capacity and power and immunity as they "won't see" that the Constitutions revoke' their judicial capacity in this case. They misrepresent this Petitioner concerning Supreme Court Rule 10 by failing to even mention the actual rule that this Petitioner is appealed under. They make an utterly ridiculous statement that USC 42, Section 1983 and jury trial demands were not asserted when the record is polluted with them. They claim in complete disregard of law that this Petitioners appeal to the G.A. Supreme Court was untimely, when as a matter of law there is no time limit for attacking on its face null and constitutionally prohibited judgments in this case. The Respondents answer is replete with dishonesty!

2. III. 1. A. The Respondents claim that this Petitioner has "utterly failed to assert a cognizable claim under Rule 10." But the Respondents conveniently leave out (omit) the last part of the rule 10c in their argument ("a state court ...has decided an important federal question in a way that conflicts with relevant decisions of this Court.") that does provide a reason for consideration and is this Petitioner's Rule 10 claim. The Respondents argument under rule 10 are irrelevant as this Certiorari was not made under the rules of which they argue and they completely ignore the relevant part of rule 10c.

(a). The Respondents are further in error by claiming that ***Blakely v. Washington, 542 U.S. 296, 124 S. CT. 2531 (2004)*** was improperly relied on and dealt only with criminal cases. ***"Regardless of whether the object of concern is criminal or civil, the right to trial by jury is no mere procedural formality, but a fundamental reservation of power in our constitutional structure." Blakely v. Wash.***

3. III.1. B. The Respondents have stated that this "(Petitioner) did not make a claim (of) lack of jurisdiction." This Petitioner in fact, made the claim of a lack of jurisdiction even before the G.A. courts had made their null judgments – because he knew they would usurp jurisdiction! This Petitioner made this claim on item 6 (page 8a in Respondents appendix) of the original complaint (they just won't see it).

(a). The Respondents continue their myths of judicial immunity and judicial capacity. G.A. Con. Art. 1, Sec. I, Par. XI/7th Amend. revokes judicial capacity when a written jury trial demand is perfected, as in this case. Every case the Respondents referred to in their par. III.1.B. provides immunity only if jurisdiction is also held and all the protections for immunity are vaporized with the loss of judicial capacity. Additionally, O.C.G.A. 9-15-15 (c) revokes judicial immunity completely regardless of capacity!

4. III. 1. C. The Respondents make 2 errors in stating that 7th amendment or USC 42, 1983 claims were not raised and (as a rule) that they can't be used in this Certiorari.

(a). Error 1: But in *Singleton v. Wulff,* 428 U. S. 106, 121, 96, S. Ct 2868 (1976) – This U.S. SUPREME COURT states, *"We announce no general rule. Certainly there are circumstances in which a federal appellate court is justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt, see Turner v. City of Memphis,* 369 U. S. 350 (1962), *or where "injustice might otherwise result." Hormel v. Helvering,* 312 U.S. at 312 U. S. 557.

(b). Error 2: However, and on the contrary to the Respondents ridiculous statement (their eye won't see them), this Petitioner did raise these claims as follows:

(c). This Petitioner made 2 separate, distinct, and undisputed written jury trial demands in paragraphs 1 and 8 of his original complaint (found in Respondents appendix, page 7a and 9a). The written jury trial demand in paragraph 1 meets federal standards and is his 7th amendment demand. In paragraph 8 a jury trial demand is specifically made under G.A. laws and Constitution as they don't have a specific format. Please note, a written jury trial demand is required by both state and federal law; that is why there are two (2) written demands.

(d). This Petitioner refers to both jury trial right(s) in the plural in Part 2. Para. 1 and Part 3. Para. 1 (found in Respondents appendix, page 14a and 15a) before the G.A. Court of Appeals.

(e). This Petitioner in his Petition for Writ of Certiorari before the G.A. Supreme Court (which the Respondents conveniently omit, but included in this

Appendix) refers to: "due process rights and perfected ancient, state, and federal Jury trial rights" in his Brief Part 1 and par. 1 (App. pp.-1-); Federal Jury 7th amendment rights are referenced in Part 2, The State Court of Fulton County in paragraphs 1. (e.), and (g) (App. pp. -4-); Part 2 - The State Court of Fulton County in paragraphs 1, (App. pp.-5-) 5 (b), (App. pp.-7-) 6 and 7(App. pp. -10-); and Part 2 - The Court of Appeals in paragraph 2.(3) (App. pp.-12-).

(f.) Yes, this Petitioner make a claim for USC 42, Section 1983 under the O.C.G.A. 9-15-15 (d). O.C.G.A. 9-15-15 (d) is the state law that enforces USC 42 Section 1983. Paragraph 1 of Petitioners original complaint covers the Federal claims. In par. 1; "Objection to Superior Court Judge Making Illegal Judgment Under O.C.G.A. 9-15-15 (d)." O.C.G.A. 9-15-15 (d) makes it illegal for a frivolity review in 3 instances: quo warranto, mandamus, and USC Title 42, Section 1983. It is obvious that quo warranto and mandamus do not apply in this case. That leaves only USC Title 42, Section 1983. The federal jury trial demand was made above the objection which asserts Section 1983. Both issues were Federal!

(g). Additionally, This Petitioner in his Petitions before the G.A. Appeals and Supreme Court also referred to USC 42, Section 1983 multiple times: Part 2, The State Court of Fulton County, par. 1. (a) (app. pp. -3-), (g) (2) (app. pp. -5-); Part 2, The Superior Court of Fulton County par. 1 (app. pp. -5-), 5.(a) (app. pp. -7-), 5. (b) (app. pp. -7-), 5. (e)(2) (app. pp. -8-); Part 2, The Court of Appeals par. 2 (3) (app. pp. -14-), and 2(8) (app. pp. -15-).

(h). However, this is the very 1st time the Respondents have claimed that the 7th amend./USC 42, Section 1983 were not raised. The Respondents made answers to both the G.A. Appeals and Supreme Courts and did not once protest at this Petitioner's use of those claims. They simply pretended the claims don't exist or said they can violate them! The G.A. judiciary simply agreed! Following the Respondents own arguments in par. III.1.c. they are prohibited (under the same laws they sought to prohibit this Petitioner) from raising their "eye won't see" new issue now.

(i). Yes, there were rulings by the Appeals/Supreme Courts of G.A. and yes, the jury trial/USC 42, Section 1883 is clearly in the record. Yet, somehow this case did not receive the required jury trial. The G.A. Courts (like the Respondents) were also suffering from eye won't see the jury/USC claims too and used state laws to deprive federal rights.

(j). While it is true that the 14th amendment has not been held applicable to the states regarding civil jury trial rights, however 5th/14th amendment due process rights have been! The Respondents in the process of depriving the state rights of a jury trial (a due process right itself) resulted in a federal due process depravation - The right to be free of judge's judgments when a written jury trial demand is made (G.A. Constitution Art. 1, Sec. I, Par. XI) which also results in a deprivation of 5th/14th amendment rights as were found applicable upon the states. Additional due process rights deprivations by the Respondents and G.A. judiciary are listed in detail in the Certiorari before this U.S. SUPREME COURT.

5. Summary: The Respondents have changed their story several times with 3 matching confessions:

(a). The First Confession: The Respondents answer to the State Court of Fulton County, (which they also omit from their Appendix) confess that they won't even see jury trial claims that clearly appear in the record. – "As to Plaintiffs claims that he made written demand for a jury trial and did not waive such demand, Defendants are without knowledge or information sufficient to form a belief as to the truth of those averments." Answer of the Defendants Bessen, Porter, and Thompson, Fifth Defense, Item 4. Whereas, the entire G.A. judiciary pretended that they could not see them either and made judgments under state law depriving Federal rights!

(b). The Second Confession: The Respondents in their statement that the Appeals/Supreme Court of G.A. could not address the Jury trial and USC 42, Section 1983 claims because this Petitioner did not raise them is a desperate lie! The attached Appendix or paragraphs 4(e) and 4(g) above prove otherwise. Now before this U.S. SUPREME COURT the Respondents confess that their "eye won't see" the Jury or USC claims clearly appearing in the record! Hey selective blindness worked in the G.A. Judiciary!

(c). The Third Confession: The Respondents did not even specifically mention any jury trial rights at all until this case reached the G.A. Supreme Court – There they finally admitted that jury trial rights are involved, but it's OK because they had unlimited power to violate jury trial rights.

"Because the issuance of <u>*any*</u> (including null, void, lacking jurisdiction, and constitutionally prohibited) *judgment by a* <u>*state*</u> *court judge resulting in* <u>*deprivation*</u> *of a* <u>*litigant's right to trial by jury*</u> *would constitute an act taken in that judge's* <u>*judicial capacity*</u>*..."* Response to the Appellant's Petition for Writ of Certiorari, page 7, lines 12-14. The G.A. judiciary simply agreed with them!

(d). Their Section 1983 confession was intended to secure a position where only injunctive relief could be issued against them and not a civil suit in case this case went Federal. However, this Petitioner did not sue the Respondents under USC 42, Section 1983 as judicial officers, but as state actors because of their complete lack of judicial capacity.

(e). An injunction is needed under USC 42, Section 1983 to protect jury trial and due process rights from further deprivations by the G.A. judiciary involving this case.

(f). <u>I Won't See Conspiracy</u>: The Respondents usurp jurisdiction where prohibited by the Constitutions because they won't see (like the jury/USC 42 claims) such constitutional limits on their capacity. The G.A. judiciary simply won't see it either!

<u>6. Conclusion</u>: The Respondents refusal to see the Jury/USC claims clearly appearing in the record – then accuse this Petitioner of not raising these claims!!!??? The Respondents failed to object even once to this Petitioners use of these Federal claims, because they won't see them. Since they won't see them how can they object too them? This juvenile

behavior is simple dishonestly! The Respondents and G.A. judiciaries "eye" problem are reason enough for this Supreme Court to exercise its' supervisory powers and restore the rule of law to the Georgia judiciary!

(a). If this U.S. SUPREME COURT will not act; it will embolden the G.A. judiciary with the myth of unlimited power and they will deprive other persons of their rights!

(b). This SUPREME COURT can restore the rule of law by simply mandating that a jury trial be provided in the Fulton County State Court of Georgia and let "We The People" take it from there!

APPENDIX

THE SUPREME COURT
STATE OF GEORGIA

State Courts Civil Action File # 08EV005601D
Superior Courts Civil Action File # 2009CV165764
Appeals Court Case # A09A2265
G.A Supreme Court Case # S10C1572

Nathan Crisp]
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Pro se Petitioner]
v.]
Diane Bessen , et al.]
Respondents]

PETITION FOR WRIT OF CERTIORARI

BRIEF
PART 1

1. Now Comes Petitioner, Pro se, Nathan Crisp hereby files his appeal to enforce his due process rights and perfected ancient, state, and federal Jury trial rights lawfully demanded, that are not waved.
2. The Georgia Supreme Court has jurisdiction, as The Supreme Court may review by certiorari cases in the Court of Appeals which are of gravity or great public importance - GA Const. Art. 6, Sec. VI, Par. V. And in cases regarding the Constitution of the State of Georgia and of the United States Constitution - GA Const. Art. 6, Sec. VI, Par.II (1).

3. This writ of certiorari is filed in excess of 20 days of the Appeals Court's Judgment. However, as this case deals with the inviolate rights of Jury Trial (which can not be violated) and void on its' face judgments - there is no time limit – O.C.G.A 9-11-60 (f), and may be attacked in any Court at any time – O.C.G.A 9-11-60(a), and in *Wasden v. Rusco Indus., 233 Ga. 439, 445 (211 SE2d 733) (1975),* the Supreme Court held that "[s]tatutes of limitation have no application to [void] judgments, and there can be no bar, estoppel or limitation as to the time when a void judgment may be attacked."

4. The Petitioner requests that a hearing be conducted on this appeal.

5. On Nov. 4th, 2008 Judge Edlein, State Court of Fulton County via judgment transferred this case to the Superior under the presumed authority of O.C.G.A. 9-15-15(d). On May 29, 2009 the Honorable Judge Jerry W. Baxter, Superior Court of Fulton County issued a judgment under the presumed authority of O.C.G.A. 9-15-15(d) granting the Respondents Motion to Dismiss. On January 29, 2010 The Court of Appeals of Georgia issued a paper (unsigned and not for official release) setting aside the Petitioners due process and Jury Trial Rights by failing to enforce them. A motion for reconsideration was submitted exemplifying Jury Trial Rights asserted and the Constitutional prohibitions of judges rendering judgment and again the Court of Appeals refused to meet its' constitutional duty to enforce them, therefore in effect sets aside the inviolate and due process rights of the Petitioner on Feb. 11, 2010.

PART 2
ENUMBERATION OF ERRORS
The State Court of Fulton County

1. The Honorable Judge Edlein, State Court judge erred in rendering a judgment to transfer this case to the Superior Court for seven reasons:
(a). Title 42 Section 1983: In the original complaint, this Petitioner clearly objected (page 2, para. 3) to Superior Court Judge making illegal judgment under O.C.G.A. 9-15-15(d) which includes an action brought under Title 42, Section 1983 of the United States Code, which is exempt from transfer to the Superior court under O.C.G.A.9-15-15(d).
(b). Due Process Errors: The State Court judge violated due process rights (United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]) by assigning a Superior Court judge via judgment to the District Court Administrator. O.C.G.A.9-15-15(d) does not authorize Judge Edlein to make a this judgment – It is the clerk of court that presents the pleading to the court administrator- "but the clerk of court shall file the matter, but shall present the complaint or other initial pleading to the district court administrator for the judicial circuit where the action was filed, to assign to a superior court judge of that circuit." It has further come to the attention of this Petitioner, that the clerk of court refused to present the pleading and the court administrator refused to assign a superior court judge; because a written Jury trial demand had been made and concerns for violations of due process.
(c). Hearing or Waved Hearing: To have a hearing or the waver of a hearing appears to be a question this court will need to decide. The State Court may have erred in not providing the constitutionally mandated hearing (GA Const. Art. 6, Sec. VI, Par. VIII.). The Petitioner in this case has not requested a hearing and has waved his due process right under-

Wilkins v. State, *220 Ga. App. 516*, 518 (3) (*469 SE2d 695*) (1996); Mullins v. State, *224 Ga. App. 218 (1) (480 SE2d 264) (1997)* and Peyton v. Peyton, *236 Ga. 119*, 120-121 (*223 SE2d 96*) (1976). However, the Respondents have a specific right to a hearing under GA Const. Art. 6, Sec. VI, Par. VIII and may have not waved the right as it is a constitutional right.

(d). **Null, Void, and Constitutionally Prohibited Judgment:** Judge Edlein erred in rendering a transfer judgment because a written Jury Trial demand was perfected and not waved by this Petitioner. Judge Edlein has no authority to render a judgment of any kind, her judgment is constitutionally prohibitive (Ga. Const. Art. 1, Sec. I, Par. XI.), rendering it void, and null on its face - *McCarthy v. Holloway, 245 Ga. 710, 711 (267 SE2d 4) (1980).*

(e). **Jury Trial Rights**: Judge Edlein in rendering her judgment violated this Petitioner's inviolate rights of to a Jury Trial as a written demand is perfected- O.C.G.A. 9-11-60(d)(1) and (3), Ga. Const. Art. 1, Sec. I, Par. XI and U.S. Constitution 7th Amendment.

(f).**Non-Amendable Defect**: The failure to provide the required Jury trial is a non-amendable defect! See: O.C.G.A. 9-11-38, and *Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978).*

(g) . **Federal Rights Asserted**: Judge Edlein erred in her "judgment" that this petitioner was challenging under state and not federal rights (footnote 1 of page 1).

(1). This Petitioner clearly uses the term Jury Trial rights in several areas of his original complaint. "Rights" is plural and because I wrote the word

"Rights" it means to include all Jury trial rights: State, Federal, and Ancient!
(2). In the original complaint, this Petitioner clearly objected (page 2, para. 3) "**OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL JUDGEMENT UNDER O.C.G.A. 9-15-15(d)"** which includes an action brought under Title 42, Section 1983 of the United States Code which exclusively deals with Federal Constitutional Rights.

ENUMBERATION OF ERRORS
The Superior Court of Fulton County

1. OCGA 9-15-15(d) Errors: The Honorable Judge Jerry W. Baxter himself declared he was authorized to make judgments under OCGA 9-15-15(d), but he is not authorized by OCGA 9-15-15(d) to render judgment because OCGA 9-15-15(d) exempts, Title 42, Section 1983 from judgment. Title 42, Section 1983 is obviously asserted (page 2, para. 3) as the Respondents are continuing to violate the Petitioner's due process rights and Jury Trial rights guaranteed by the U.S. Constitution, Federal law, Georgia constitution, and State laws.
2. Void, Null, Unconstitutional Judgment: The Honorable Judge Jerry Baxter in rendering his judgment violated constitutional law prohibiting judgments where an written Jury Trial demand is perfected and not waved – O.C.G.A. 9-11-60(d)(1) and Ga. Const. Art. 1, Sec. I, Par. XI. The Honorable Judge Jerry Baxter's judgment is void and null on it's face - *McCarthy v. Holloway, 245 Ga. 710, 711 (267 SE2d 4) (1980). "A lack of jurisdiction or power in a court entering a judgment always avoids the judgment, ... such action is a mere usurpation of power by the court and may be declared void*

collaterally without any direct proceedings to revise it - Prescott v. Bennett, 50 Ga. 266.

3. **Non-Amendable Defect**: The failure to provide the required Jury trial is a non-amendable defect! See: O.C.G.A. 9-11-38, and *Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978).*

4. **Judgment Errors**: The Honorable Judge Jerry Baxter made two errors by justifying in his judgment that no motions of objection were made by the Petitioner.

(a). His judgment is now an undisputed error as both the Respondents and Court of Appeals (by adopting judgment) admit openly to this error. If the Honorable Judge Jerry Baxter had actually reviewed the case, he would have noted that the Petitioner had indeed overwhelmingly made strongly-worded multiple objections clearly indicated in the court records. His error was harmful and inconsistent with substantial justice - O.C.G.A 9-11-61.

(b). The Honorable Judge Jerry Baxter lacks the authority to dismiss this case even when a Petitioner fails to object! When a Jury trial is demanded in writing, perfected, and not waved, the failure to object is not one of the circumstances that will wave the inviolate rights - *Manderson &c. v. Gore, 193 Ga. App. 723 (5) (389 SE2d 251) (1989). "The constitutional guarantee of the right to trial by jury refers to two circumstances in which the right may be waived: when no issuable defense is filed and when the parties fail to demand a jury trial."*

5. **Failure to State a Claim**: Judge Baxter made at least eight errors in dismissing this Petitioners complaint for the very vague (unspecified) failure to state a claim for relief.

(a). The respondents in "Answer of the Defendants – First Defense" made the ridiculous assumption that violations of civil and constitutional rights are a failure to make a claim. It is obvious that civil and constitutional rights violations are actionable – O.C.G.A. 9-2-1 (2) "'Civil action' means an action founded on private rights, arising either from contract or tort." See Title 42, Section 1983.
(b). The Respondents in their "memorandum of law in support of motion to dismiss claim" also "Answer of the Defendants – Second Defense" attempt to justify a failure to state a claim by falsely asserting that the Respondents are entitled to Judicial Immunity (page 2. Para. III.A.1.). Georgia Judges (the Respondents) have no judicial immunity as a matter of law - O.C.G.A. 9-15-15. Additionally, the Respondents themselves misinterpret and reversed the intent of Mireles 502 U.S. at 11-12, 112 S. Ct at 288 and others (page 2, last paragraph). The Respondents have no jurisdiction to rendered judgments in their cases because a written Jury Trial Demand is perfected - O.C.G.A. 9-11-60(d)(1) and (3), Ga. Const. Art. 1, Sec. I, Par. XI and U.S. Constitution 7th Amendment. Because the Respondents actions are obviously "in the complete absence of all jurisdiction" they are not entitled to immunity under *Mireles 502 U.S. at 11-12, 112 S. Ct at 288* and others. Additionally, the Respondents are not provided immunity in an action brought under Title 42, Section 1983 of the United States Code, even if the action arises out of the performance of the judicial officer's official duties. Additionally O.C.G.A. 9-15-15(a) and (b) require that the Respondents actions to be official – *"The provisions of subsection (a) of this Code section shall apply both with respect to actions brought against a judicial officer in his or*

her official capacity and with respect to actions brought against a judicial officer in his or her individual capacity where the action arises out of the performance of the judicial officer's official duties."
(c). The Respondents in their "Answer of the Defendants – Third Defense" attempt to justify a failure to state a claim by stating, "Plaintiffs claims are barred by the doctrine of res judicata" is a lie! As the Respondents are fully aware of, this case is not barred by the doctrine of res judicata as the UNITED STATES DISTRICT COURT NORTHERN GEORGIA DIVISION Case # 1 08-CV-1489 only dismissed this case due to a lack of jurisdiction. Following this dismissal, this Petitioner filed this case in the correct jurisdiction.
(d). The Respondents in their "Answer of the Defendants – Forth Defense" is merely a denial, which is a matter for a jury to decide.
(e). The Respondents in their "Answer of the Defendants – Fifth Defense" (Items 1-10) attempt to justify a failure to state a claim by pretending jury trial rights don't exist or were not demanded and that the exercise of the Petitioners due process rights are irrelevant.

(1). Para 1. Is a ridiculous statement that this Plaintiffs written Jury Trial demand contains no factual averments. The fact is self-evident, the written demand appears in the complaint. The written Jury Trial demand is itself a factual averment.

(2). Indeed is a legal conclusion and fact based upon the constitution Art. 1, Sec. I, Par. XI. Art. 1, Sec. I, Par. XI itself is a factual averment and is for a jury to determine this legal conclusion as well. Further, "OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL JUDGEMENT

UNDER O.C.G.A. 9-15-15(d)" is the exercise of the Petitioners due process rights under Title 42, Section 1983 of the United States Code. Itself is a factual averment and is for a jury to determine this legal conclusion.

(3). Indeed is a legal conclusion and fact, Georgia Judges (the Respondents) as a matter of law have no judicial immunity- see O.C.G.A. 9-15-15, a factual averment. It is for a jury to determine this legal conclusion.

(4). This assertion by the Respondents would be humorous if not so serious a violation of rights. The fact that the Respondents ridiculously claim that they lack knowledge or information regarding jury trial demands in their cases where unwaved written jury trial demands clearly appear in those records as a factual averment. The Respondents "laughable" lack knowledge or information regarding jury trial demands can easily be remedied as these cases are to this day readily available! The written Jury Trial demands in these case files are in themselves a factual averment. It is self-evident!

(5). Is simply a denial. This matter is for a jury verdict.

(6). This Petitioner exercised his due process right to object to the Respondents motions. The Petitioners objection is itself a factual averment that appears clearly in the record. It is self-evident!

(7). The Petitioners demand for a jury trial and pre-objections are itself a factual averment that appears clearly in the record. It is self-evident!

(8). The Petitioners non-waver of rights to a jury trial is itself a factual averment that appears clearly in the record. It is self-evident!

(9). The Petitioners stipulation of this case to the trial calendar is itself a factual averment that appears clearly in the record. It is self-evident!

(10). The Respondents justify on the presumption of Judicial immunity - See (3) above.

6. and 7. Due Process and Jury Trial Rights Violations. The Honorable Judge Jerry Baxter in rendering his judgment committed the same offense as the Respondents and violated the Petitioners federal and state due process rights by failing to provide the Jury trial. United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]. Even if (which they are not) there actually was a failure to state a claim or judicial immunity or res judicata it is for a jury to decide such facts and laws – not Judge Baxter - Ga. Const. Art. 1, Sec. I, Par. XI and U.S. Constitution 7th Amendment.

8. The Hearing: The Honorable Judge Jerry Baxter may have erred by failing to hold the constitutionally required hearing to evaluate evidence when an action is taken against a judge - GA Const. Art. 6, Sec. VI, Par. VIII.

ENUMBERATION OF ERRORS
The Court of Appeals

1. (1)The Evidence Supports the Judgment and (3) The Judgment of the Court Below adequately explains the Decision: The Court of Appeals erred when it adopts judgments of the lower courts. As this Court is fully aware of but chosen to ignore; a written jury trial demand is perfected and not waved therefore only a jury can evaluate the evidence (Ga. Const. Art. 1, Sec. I, Par. XI). The judgments made by the lower court judges are null, void, and constitutionally prohibitive (Ga. Const. Art. 1, Sec. I,

Par. XI). The Court of Appeals erred when it attempts to give life to the null, void, and constitutionally prohibitive judgments made by the lower Courts. *"A void judgment is a mere nullity and has no vital force under any consideration or at any time. There is no presumption of validity... Nothing can occur which will give the judgment life, and even if an execution has been issued upon it, it may still be attacked." Wasden v. Rusco Industries, 233 Ga. 439, 444 (211 SE2d 733).* The Court of Appeals not only tried to bring the lower courts null and void judgments to life, but executed them by adopting them as their own judgment. Rendering this judgment of the Court of Appeals itself null, void, and constitutionally prohibitive and there is no time limit as to when they can be attacked - O.C.G.A 9-11-60 (f), O.C.G.A 9-11-60(a), and Wasden v. Rusco Indus., 233 Ga. 439, 445 (211 SE2d 733) (1975).

2. **(2) No Reversible Error:** The Court of Appeals erred stating that no reversible error of law appears in the original judgment. There are actually eight non-amendable defects:

(1). **Violation of Jury Trial Rights is a non-amendable defect.** As the Court of Appeals is fully aware of, but chose to ignore; a written Jury trial demand is perfected, and there is no waver of the inviolate rights. Both the Court of Appeals and the Supreme Court have long held that the failure to provide the required Jury trial is a non-amendable defect! See: O.C.G.A. 9-11-38, and *Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978).*

(2). **Violation of O.C.G.A 9-11-39(a) Is A Non-amendable Defect.** This Petitioner as the Court record clearly shows did not place a written waver stipulation in the trial record; but in fact placed a

written jury trial demand in the Petitioners complaint (page 2, par. 1) and because a hearing was not provided, the opportunity for the Petitioner to make an oral stipulation was impossible. O.C.O.G 9-11-39(a) *"The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, may consent to trial by the court sitting without a jury." Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978) (holding that the failure to conduct a jury trial was a non-amendable defect where no waiver of jury trial appeared of record). See also Coker v. Coker, 251 Ga. 542 (307 SE2d 921) (1983); Scott v. W. S. Badcock Corp., 161 Ga. App. 826 (289 SE2d 769) (1982).*

(3). Violation of Multiple Inviolate Jury Trial Rights. The State, Superior, Appeals Courts in issuing their null, void, and constitutionally prohibitive judgments are violating the Petitioner's multipliable ancient, state, and federal inviolate Jury Trial rights: *State Rights* - Ga. Const. Paragraph XI. ***Right to trial by jury; number of jurors; selection and compensation of jurors.*** *(a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party."* O.C.G.A. 9-11-38. The right of trial by jury as declared by the Constitution of the state or as given by a statute of the state shall be preserved to the parties inviolate. *Ancient Rights*- "The common law of force prior to May 14, 1776, was adopted as the law of this State by the act of February 25, 1784, except where modified by statutes or not adjusted to the conditions or system of government existing

here." *Harris v. Powers, 129 Ga. 74 (2) (58 SE 1038, 12 AC 475). See also Alexander v. Dean, 157 Ga. 280, 283 (121 SE 238)." Crowder v. Dept. of State Parks, supra, p. 439.* "Those who emigrated to this country from England brought with them this great privilege `as their birthright and inheritance, as a part of that admirable common law which had fenced around and interposed barriers on every side against the approaches of arbitrary power." *Andres v. United States, 333 U.S. 740. Magna Carta of 1215 (39)* "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." *Petition of Right, 1628*: III. And whereas also by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land. *Federal Rights* – The Federal constitution is adopted into law by the G.A. Constitution, "Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them" – See GA Const. Art. I, Sec. II, Para. V. The Seventh Amendment to the United States Constitution declares that: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." When a state court is enforcing a federally created right (U.S.

Constitution 7th Amendment and Title 42, Section 1983) as this Supreme Court is called to do, of which the right to trial by jury is a substantial part, the States may not eliminate trial by jury - *Minneapolis & St. Louis R.R. v. Bombolis, 241 U.S. 211 (1916). See also Melancon v. McKeithen, 345 F. Supp. 105 (E.D.La.) (three-judge court), aff'd. per curiam, 409 U.S. 943 (1972); Alexander v. Virginia, 413 U.S. 836 (1973).* Additionally, in this Title 42, Section 1983 action, a jury trial must be provided - 42 USC CHAPTER 21, Sec. 1981a (c).

(4). **Violation of Judicial Precedent.** The lower and Appeals Courts have decided several important state and federal questions in a way that substantially conflicts with the relevant decisions of this Court and of the United States Supreme Court. The Court of Appeals and the lower Courts in violating and refusing to enforce undisputed Jury Trial and due process rights have failed to follow Judicial Precedent, as well established by this Supreme Court. "The decisions of the Supreme Court shall bind all other courts as precedents" - GA Const. Art. 6, Sec.7 Par VI.

(5). **No Hearing Provided.** The lower courts and The Court of Appeals may have violated the constitution by failing to enforce the mandated hearing - GA Const. Art. 6, Sec. VI, Par. VIII.

(6). **Violation of Due Process Rights.** The multiple null, void, and constitutionally prohibited judgments of all the lower courts has violated equal protection and due process rights of the Petitioner. "Both the Georgia and United States Constitutions prohibit the state from depriving any person of life, liberty, or property, without due process of law." United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]. "A party's cause of action is a

property interest that cannot be denied without due process." See - *Nix v. Long Mountain Resources, 262 Ga. 506, 509 (3) (422 SE2d 195) (1992).*

(7). **Null, Void, and Constitutionally Prohibitive Judgments.** The lower courts issued null and void judgments because they lacked jurisdiction over both the person and the subject matter when they violated constitutional law prohibiting judgments where a written Jury trial demand is perfected – O.C.G.A. 9-11-60(d)(1) and Ga. Const. Art. 1, Sec. I, Par. XI. "When a court purports to render a judgment beyond its jurisdiction, the judgment is void. [Cit.] . . . [A] judgment rendered by the court when a Jury verdict is required by statute is void . . . [Cit.]." *McCarthy v. Holloway, 245 Ga. 710, 711 (267 SE2d 4) (1980), citing Canal Ins. Co. v. Cambron, 240 Ga. 708 (242 SE2d 32) (1978) and Greene v. Greene, 76 Ga. App. 225 (45 SE2d 713) (1947).*

(8). **OCGA 9-15-15 (d) Errors.** The Honorable Judge Jerry W. Baxter himself declared he was authorized to make non-hearing judgments under OCGA 9-15-15(d), but he is not authorized by OCGA 9-15-15(d) to do so because a USC 42, Section 1983 was asserted. Judge Edlein violated due process rights (United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]) by transferring this case to the Superior Court via judgment. Even if OCGA 9-15-15(d) did give the Judges (in light of the written Jury trial demand perfection, constitutionally mandated hearing, and prohibitive judgments) such authorization – it would still be unconstitutional – "Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them" – See GA Const. Art. I, Sec. II, Para. V.

4. Duty Failure: The Court of Appeals failed to enforce the rights of a Jury Trial right – the right is inviolate (Ga. Const. Art. 1, Sec. I, Par. XI). The Court of Appeals by tacitly revoking the rights have failed in their duty to enforce the due process and undisputed Jury trial rights of the Petitioner - "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws." (Ga. Const. Art. 1, Sec. I, Par. II.) However, Judges of the State and Superior Court with the tacit approval of the Court of Appeals have violated duty process and perfected Jury trial rights of this Petitioner right along with Ga. Const. Art. 1, Sec. I, Par. II with their judgments and they continue to do so to this very day!

5. (4) Appellee's Brief: The Court of Appeals erred by adopting the Respondents brief as their judgment. The Respondents brief is an attempt to try this case before Appeals Court judges; where only a Jury can decide such facts and law (Ga. Const. Art. 1, Sec. I, Par. XI). The Respondents brief is devoid of any statue that waves this Petitioners Jury Trial Rights! The waiver of the Jury Trial rights is a matter which is "carefully controlled" by statute - *Manderson &c. v. Gore, 193 Ga. App. 723 (5) (389 SE2d 251) (1989) and Bank South, N.A. v. Howard. S93G1658. (264 Ga. 339) (444 SE2d 799) (1994).* Due process and Jury trial rights are still the law of the land – at least on paper!

6. Erred by Not Correcting Errors: The Court of Appeals erred by not overturning the lower courts judgments because their error resulted in substantial violations of the Petitioners constitutional or statutory, Jury Trial, and due process rights. "When a plaintiff in error brings a case here, he must show

error which has hurt him. ...a case will not be reversed for error in the rejection of evidence unless the error results in a miscarriage of justice or constitutes a substantial violation of a constitutional or statutory right." *Brown v. Atlanta, 66 Ga. 71* and O.C.G.A 9-11-61. The violation of at least eight (8) constitutional and statutory rights is substantial!

SUMMARY

1. No Remedy at Law: Currently, there are no valid or lawful judgments or verdicts that have provided a remedy for this Petitioners action. This Petitioner has a right for a full and adequate remedy at law - *Ballard v. Mayor of Carrollton 194 Ga. 489 (1942)* and O.C.G.A 9-2-3. It is an error to refuse certiorari when the errors complained of in a petition are sufficient in law - *McCardle v. Fogarty 41 Ga. 626 (1871), Cochran v. City of Rockmart 242 Ga. 732 (1978),* and "When a declaration of right ... and jury trial is not waived, the issues shall be submitted to a jury of 12..." O.C.G.A. 9-4-6.

2. Error: Additionally, It is obvious that the lower Courts have substantially violated this Petitioners due process and Jury Trial rights.

3. Duty: This Supreme Court has the duty to enforce due process and jury trial rights as well - Ga. Const. Art. 1, Sec. I, Par. II. "The first object of any tyrant in Whitehall would be to make Parliament utterly subservient to his will; and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave [391 U.S. 145, 156] a subject's freedom in the hands of twelve of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives." P. Devlin, *Trial by Jury* 164 (1956). "Regardless of whether the object of concern is criminal or civil, the right to trial by jury

"is no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." *Blakely v. Wash., 542 U.S. 296, 305-306 (2004).*

PART 3
MOTIONS

1. This Petitioner under all laws (as I have done from the beginning) demands a jury trial of 12 persons. The rights of a jury trial are not waved.
2. If they are not considered null and void collaterally, set aside the Fulton County State, Superior Courts, and the Appeals Court's judgments.
3. Send this action back to the lower court to either conduct the required hearing with full lawful due process as required by GA Const. Art. 6, Sec. VII, Par. VIII or conduct the constitutionally required Jury Trial; if the Supreme Court determines that the right to a hearing has been waved by the Respondents due to their failure to request a hearing.
4. The Supreme Court grant other relief as is deemed equitable and just.

/s/Nathan Crisp, CiHM SLT Pro se